



Searching for documents and information

Can you search for information in your spouse's papers?

Most divorcing and separating couples agree to exchange financial information openly and honestly, but there are exceptions. There may be concerns about whether your spouse is providing the complete picture.

If you have those suspicions, can you:

- Go through filing cabinets?
- Search on the home computer?
- Read papers left lying around at home?

Equally, is it acceptable for your spouse to go through your papers or computer files to search for information?

Until recently where there were those suspicions, it was common practice to go looking for information. You could (provided you did not use force) take, copy and retain copies of confidential documents and send them to your solicitor, and this was considered acceptable practice. However, due to recent changes in the law (the case of *Tchenguz v Imerman*, 2010), this is no longer acceptable other than in limited circumstances. A spouse who obtains and uses confidential information may be criticised by the courts and even be committing a criminal offence, even where that information is being concealed in divorce proceedings.

This note provides a summary of what is now considered acceptable conduct, and what is not.

Hard copy documents

This covers original and copied documents such as bank statements, business accounts and letters. It also includes information about a third party such as a spouse's business partner.

- If information is contained within a locked filing cabinet or equivalent then you should not break into the cabinet to get access to these documents, nor ask anyone else to do so.
- If documents are in open files or in communal office areas, you should not look for or copy documents belonging to your spouse unless it is known that the he/she would consent to those documents being viewed/copied.
- Information that has been left out openly (i.e. not locked in a drawer or study) but where it is known that your spouse would not consent to this information being copied should also not be taken or copied. It is however acceptable to make a mental note of what the

documents say or contain, or take a written note of the key points, and provide us with this information. If copies of these documents are obtained, then these should not be given to us.

- If information about your spouse is sent to us, it must be disclosed to the owner or his/her solicitor, even if it is known that your spouse consented.
- Original documents should not in any circumstances be taken without agreement.
- If copies of documents that are known to be confidential are obtained without consent, then the person who takes them is committing a criminal offence.

What about joint assets?

You are allowed to get access to documents regarding joint assets. For example if you have a joint bank account or a joint policy with your spouse then these details can be accessed and copies sent to us.

Information on a computer

This includes information about your spouse's circumstances that is contained on a home or business computer, and information on an external hard drive, memory stick or cd/disk. It also includes information on a computer about a third party, such as a spouse's business partner.

- If the information is password protected, and this password is unknown, then you must not get access to this information or ask anyone else to do so.
- If the information is unprotected, or available with a password which is known (or it was a joint password) then access to this information can be obtained if it is known that your spouse would agree.
- If computer access is freely available but it is known that your spouse would not consent to this information being copied, then it is acceptable to make a mental note (or take a written note of the key points) and provide us with this information, but copies should not be made or emailed to solicitors.
- If information from a computer is sent to us, it does however have to be disclosed to the owner or his/her solicitor, even if it is known that the other spouse consented.

Hacking into the other spouse's computer, or copying or forwarding information without consent, may be a criminal offence.

What are the remedies if your confidential information has been accessed without your consent?

You should ensure that if you have confidential documents they are kept in a secure place and that your computer files are password protected. In particular, you should find a secure place to keep correspondence and emails from us, particularly if you are still living together.

You should tell us if you believe that your spouse has, without your consent:

- taken originals or copies of documents that are confidential;
- broken into a locked filing cabinet or drawer to take or copy confidential documents; or
- accessed confidential documentation from your computer (or memory stick/hard drive); or
- read correspondence from us.

If you believe that this has happened then we can take steps to ensure that any originals, or copies of confidential documents, are returned. It may also be possible to try and prevent this information being used in the financial proceedings.

In extreme circumstances it may be possible to take actions through the courts for damages, or to seek compensation in the divorce settlement as a result of the misconduct.

Communications from solicitors

If you find documents (for example letters) or emails which have been written from your spouse's solicitor to your spouse then they must not be read and this information should not be disclosed to us under any circumstances. Nor should you tell us about calls overheard, or what these letters contain. If we receive this information, the professional conduct rules may require us to stop acting for you.

How do I get information?

For the majority of people who separate, information is exchanged openly as part of an agreed process, which means that litigation and recourse to the court system is unnecessary. However, there are ways of obtaining information from a spouse who is being secretive.

If it is likely that one spouse is going to conceal assets, we will normally recommend that the financial settlement is resolved within the court process to ensure that there are stricter disclosure obligations.

When Financial Statements (Forms E) are exchanged, there is a duty to disclose all financial circumstances, with documents in support, and it is contempt of court not to do so. There is also a duty to keep this updated and therefore any changes in your spouse's financial situation must be made known.

If there are still doubts, there can be:

- Orders for answering detailed questionnaires;
- Orders for examination of computer records;

- Production/disclosure appointments, requiring third parties such as accountants or business partners to bring documents to court;
- Penalties for failing to provide information;
- Injunctions to freeze assets pending the resolution of the settlement;
- Orders joining third parties into the divorce process to require them to produce information.

We will advise you about the right remedy to pursue if there are serious disclosure problems.

This note sets out the legal position as at September 2010. This is an evolving area of the law and the legal position may change again. You should take up to date advice, and advice about your particular circumstances.

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